

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1654 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRAKANT @ CHANDVO SHANKER CHAUDHARI

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner
Mr.P.S.Chapaneri,AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 06/05/96

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner - detenu has challenged the order of detention dated 25th February,1993 passed by the District Magistrate, Bharuch in exercise of the powers conferred under sec.3(2) of the Gujarat Prevention of Anti Social Activities Act,1985 ("the PASA Act" for short) which was executed on 1st January,1996 .

2. The detenu is branded as a boot legger. It is alleged that the petitioner is a head strong person and fearful person. That the detenu is a drunkard and in such a condition, taking up quarrels on the ground of old enmity , carries out anti social criminal activities by assaulting and causing injuries to the people and because of his fear, the people are not forthcoming to file complaints and giving deposition against him. It is alleged that such antisocial criminal activities of the petitioner are on increase day by day. When the criminal cases are filed, he is being released on bail by the court. There are as many as six offences registered against the petitioner. One is under the Prohibition Act and the rest are under the Penal Code. As many as five witnesses have deposed against the detenu to the effect that the activities of the petitioner are prejudicial to the maintenance of the public order. Alongwith the impugned order of detention, above facts are disclosed from the grounds and the documents supplied to the detenu when the impugned detention order came to be executed.

3. The impugned order of detention is challenged by the petitioner detenu on numerous grounds, one of which, pressed into service by the petitioner is to the effect that the impugned order of detention suffers from the vice of non application of mind inasmuch as extraneous facts are taken into consideration. Mr. Patel, learned advocate for the petitioner has stated that in the grounds, the detaining authority has referred to the notice issued in Chapter Case No.76 of 1993. It is alleged that by the said notice, the petitioner is called upon to furnish bond of Rs.1,000/- for a period of six months. Said notice furnished to the detenu is on record at page 87. Said notice is addressed to one Jashvant Ramubhai Vasava. In the said notice, name of the petitioner-detenu is not shown at any place. Said notice is not addressed and does not pertain to the petitioner at all. In view of these facts, it is contended by Mr. Patel that the authority has looked into extraneous material and,therefore, the impugned order of detention suffers from the vice of total non application of mind.

4. Mr. Chapaneri, learned AGP on perusing the notices in Chapter Case No.76 of 1993, has to fairly state before the Court that the notice does not pertain to the petitioner. It pertains to one Jashwant Ramubhai Vasava.

5. From the grounds of detention, it is clear that while recording the subjective satisfaction, the detaining authority has taken into consideration the

notice issued in Chapter Case No. 76 of 1993 pertaining to one Jashwant Ramubhai Vasava and not to the petitioner-detenu. When the notice in Chapter Case No.76 of 1993 does not pertain to the detenu, it is surprising as to how the detaining authority has taken into consideration these irrelevant documents and recorded subjective satisfaction on such extraneous material to the effect that the activities of the petitioner is prejudicial to the maintenance of the public order. This shows sheer non application of mind on the part of the detaining authority. Thus, the impugned order of detention suffers from the vice of non application of mind and the same is, therefore, liable to be quashed and set aside.

6. When the detaining authority is dealing with the liberty of the citizen, it is the duty of the detaining authority to act with great care, caution and vigilance so that no technical defect much less defect like non application of mind which may enter and ultimately vitiate the order of detention. In the instant case, but for this defect in the order, the order may not have been set aside. In the instant case, if the detaining authority would have properly looked into the documents and verified the same, then, such mistake could not have crept in and would not have resulted in vitiating the order. In view of these facts, I am of the opinion that the officer concerned has failed in discharge of his duties to be careful and therefore, should be saddled with the costs of the petition. The officer should, therefore, be saddled with the costs. The State should not suffer for the negligent act and/or omission on the part of its officer.

7. As this petition is being disposed of on this ground alone, other grounds raised in the petition are not considered in this judgment.

8. In the result, this petition is allowed. The The impugned order of detention dated 25th February,1993 executed on 1st January,1996 (Annexure "A") is hereby quashed and set aside. Respondent No.3 is directed to set the petitioner detenu at liberty forthwith if not required in any other case. Rule is made absolute with costs which is quantified at Rs.1000/- (Rupees one thousand only)Said amount of costs will be personally paid by respondent no.1 Shri Arvind Agarwal,District Magistrate Bharuch, and paid to Legal Aid Committee, High Court of Gujarat, Ahmedabad.

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